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13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 PREMIER FABRICS, INC., a New York  
16 Corporation,

17 Plaintiff,

18 v.

19 FINESSE APPAREL, INC., a California  
20 Corporation; DIAMANTE TEXTILE, a  
21 California Business of Form Unknown;  
22 DEB SHOPS, LLC, a Pennsylvania  
23 Limited Liability Company; and DOES  
24 1 through 10,

25 Defendants.

26 Case No.:

27 **PLAINTIFF'S COMPLAINT FOR:**

28 **1. COPYRIGHT INFRINGEMENT;**  
**2. VICARIOUS AND/OR  
CONTRIBUTORY COPYRIGHT  
INFRINGEMENT**

29 Jury Trial Demanded

1 Plaintiff PREMIER FABRICS, INC., by and through its undersigned attorneys,  
2 hereby prays to this honorable Court for relief as follows:  
3

**JURISDICTION AND VENUE**

4 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101  
5 *et seq.*  
6 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and  
7 1338 (a) and (b).  
8 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and  
9 1400(a) in that this is the judicial district in which a substantial part of the acts and  
10 omissions giving rise to the claims occurred.

**PARTIES**

11 4. Plaintiff PREMIER FABRICS, INC. (“PREMIER”) is a corporation  
12 existing under the laws of the state of New York.

13 5. Plaintiff is informed and believes and thereon alleges that Defendant  
14 FINESSE APPAREL, INC., (“FINESSE”) is a corporation organized and existing  
15 under the laws of the state of California.

16 6. Plaintiff is informed and believes and thereon alleges that Defendant  
17 DIAMANTE TEXTILE (“DIAMANTE”) is a business entity of unknown form  
18 organized and existing under the laws of the state of California, and is doing  
19 business in and with the state of California.

20 7. Plaintiff is informed and believes and thereon alleges that Defendant DEB  
21 SHOPS, LLC, (“DEB”), is a limited liability company organized and existing under  
22 the laws of the state of Pennsylvania, and is doing business in and with the state of  
23 California

24 8. Defendants DOES 1 through 10, inclusive, are other parties not yet  
25 identified who have infringed Plaintiff’s copyrights, have contributed to the  
26 infringement of Plaintiff’s copyrights, or have engaged in one or more of the  
27

wrongful practices alleged herein. The true names, whether corporate, individual or otherwise, of Defendants 1 through 10, inclusive, are presently unknown to Plaintiff, which therefore sues said Defendants by such fictitious names, and will seek leave to amend this Complaint to show their true names and capacities when same have been ascertained.

9. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto each of the Defendants was the agent, affiliate, officer, director, manager, principal, alter-ego, and/or employee of the remaining Defendants and was at all times acting within the scope of such agency, affiliation, alter-ego relationship and/or employment; and actively participated in or subsequently ratified and adopted, or both, each and all of the acts or conduct alleged, with full knowledge of all the facts and circumstances, including, but not limited to, full knowledge of each and every violation of Plaintiff's rights and the damages to Plaintiff proximately caused thereby.

## CLAIM RELATED TO DESIGN 3686

10. Prior to the conduct complained of herein, Plaintiff composed an original two-dimensional artwork for purposes of textile printing, which is set forth hereinbelow. It allocated this artwork Plaintiff's internal design number 3686 (hereinafter the "Subject Design"). This artwork was a creation of Plaintiff's design team, and is, and at all relevant times was, owned exclusively by Plaintiff.

11. Plaintiff applied for and received a United States Copyright Registration for the Subject Design.

12. Prior to the acts complained of herein, Plaintiff sampled and sold fabric bearing Subject Design to numerous parties in the fashion and apparel industries. A true and correct image of the Subject Design is presented below:

## Subject Design:



13. Plaintiff is informed and believes and thereon alleges that, following this distribution of fabric bearing the Subject Design by Plaintiff, FINESSE, DIAMANTE, DEB, and certain DOE Defendants created, sold, manufactured, caused to be manufactured, imported and distributed fabric or garments comprised of fabric bearing an unauthorized reproduction of Subject Design (“Subject Product”). Such Subject Product includes but is not limited to the DEB garments sold under, *inter alia*, Style No. 1000057041. Such Subject Products bore the labeling indicating that said garments were manufactured by, caused to be manufactured by, or supplied by FINESSE. Plaintiff is informed and believes, and thereon alleges that said Subject

1 Product was supplied to FINESSE by DIAMANTE. See below for true and correct  
2 images of one such garment and tags:



14. Plaintiff is informed and believes and thereon alleges that Defendants, and  
15 each of them, have committed copyright infringement with actual or constructive  
16 knowledge of Plaintiff's rights and/or in blatant disregard for Plaintiff's rights, such  
17 that said acts of copyright infringement were, and continue to be, willful, intentional  
18 and malicious, subjecting Defendants, and each of them, to liability for statutory  
19 damages under Section 504(c)(2) of the Copyright Act in the sum of up to one  
20 hundred fifty thousand dollars (\$150,000) per infringement.

21  
22 15. A comparison of the Subject Design and each non-exclusive exemplar of  
23 Subject Product makes apparent that the elements, composition, arrangement, layout,  
24 and appearance of the designs are substantially similar.

25  
26  
27     ///

**FIRST CLAIM FOR RELIEF**

(For Copyright Infringement – Against All Defendants, and Each)

16. Plaintiff repeats, realleges, and incorporates herein by reference as though  
fully set forth, the allegations contained in the preceding paragraphs of this  
Complaint.

17. Plaintiff is informed and believes and thereon alleges that Defendants, and  
each of them, had access to Subject Design, including, without limitation, through  
(a) access to Plaintiff's showroom and/or design library; (b) access to illegally  
distributed copies of the Subject Design by third-party vendors and/or DOE  
Defendants, including without limitation international and/or overseas converters  
and printing mills; (c) access to Plaintiff's strike-offs and samples, and (d) garments  
manufactured and sold to the public bearing fabric lawfully printed with the Subject  
Design by Plaintiff for its customers.

18. Plaintiff is informed and believes and thereon alleges that one or more of  
the Defendants manufactures garments and/or is a garment vendor. Plaintiff is  
further informed and believes and thereon alleges that said Defendant(s) has an  
ongoing business relationship with Defendant retailers, and each of them, and  
supplied garments to said retailer, which garments infringed the Subject Design in  
that said garments were composed of fabric which featured unauthorized print  
design(s) that were identical or substantially similar to the Subject Design, or were  
an illegal derivation or modification thereof.

19. Plaintiff is informed and believes and thereon alleges that Defendants, and  
each of them, infringed Plaintiff's copyright by creating, making, and/or developing  
directly infringing and/or derivative works from the Subject Design and by  
producing, distributing and/or selling garments which infringe the Subject Design  
through a nationwide network of retail stores, catalogues, and through on-line  
websites.

20. Due to Defendants' acts of infringement, Plaintiff has suffered substantial damages to its business in an amount to be established at trial.

21. Due to Defendants' acts of infringement, Plaintiff has suffered general and special damages in an amount to be established at trial.

22. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of the Subject Design. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of the Subject Design in an amount to be established at trial.

23. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed acts of copyright infringement, as alleged above, which were willful, intentional and malicious, which further subjects Defendants, and each of them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000) per infringement. Within the time permitted by law, Plaintiff will make its election between actual damages and statutory damages.

## **SECOND CLAIM FOR RELIEF**

(For Vicarious and/or Contributory Copyright Infringement - Against All Defendants)

24. Plaintiff repeats, realleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

25. Plaintiff is informed and believes and thereon alleges that Defendants knowingly induced, participated in, aided and abetted in and profited from the illegal reproduction and/or subsequent sales of garments featuring the Subject Design as alleged herein.

26. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, are vicariously liable for the infringement alleged herein because they had the right and ability to supervise the infringing conduct and because they had a direct financial interest in the infringing conduct.

27. By reason of the Defendants', and each of their, acts of contributory and vicarious infringement as alleged above, Plaintiff has suffered and will continue to suffer substantial damages to its business in an amount to be established at trial, as well as additional general and special damages in an amount to be established at trial.

28. Due to Defendants', and each of their, acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of the Subject Design. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of the Subject Design, in an amount to be established at trial.

29. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed acts of copyright infringement, as alleged above, which were willful, intentional and malicious, which further subjects Defendants, and each of them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000) per infringement. Within the time permitted by law, Plaintiff will make its election between actual damages and statutory damages.

## PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment as follows:

## *Against All Defendants*

**30. With Respect to Each Claim for Relief**

- 1 a. That Defendants, each of them, and their agents and employees be  
2 enjoined from infringing Plaintiff's copyrights in any manner,  
3 specifically those for the Subject Design;
- 4 b. That a constructive trust be imposed over the Infringing Product and any  
5 revenues derived from their sales;
- 6 c. That Defendants, and each of them, account to Plaintiff for their profits  
7 and any damages sustained by Plaintiff arising from the foregoing acts  
8 of infringement, the exact sum to be proven at the time of trial, or, if  
9 elected before final judgment, statutory damages as available under the  
10 Copyright Act, 17 U.S.C. § 101 et seq.;
- 11 d. That Plaintiff be awarded its attorneys' fees as available under the  
12 Copyright Act U.S.C. § 101 et seq.;
- 13 e. That Plaintiff be awarded pre-judgment interest as allowed by law;
- 14 f. That Plaintiff be awarded the costs of this action; and
- 15 g. That Plaintiff be awarded such further legal and equitable relief as the  
16 Court deems proper.

17 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.  
18 38 and the 7<sup>th</sup> Amendment to the United States Constitution.

19 DONIGER / BURROUGHS

20 Dated: February 10, 2015

21 By: /s/ Scott A. Burroughs  
22 Scott A. Burroughs, Esq.  
23 Trevor W. Barrett, Esq.  
24 Attorneys for Plaintiff  
25 PREMEIR FABRICS, INC.